



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Inscom Electronics Corporation

**File:** B-225221

**Date:** February 4, 1987

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### **DIGEST**

To be responsive a bid must reflect an unequivocal offer to provide the exact product or service called for in the invitation for bids (IFB) so that its acceptance would bind the contractor to perform in accordance with the IFB's material terms and conditions. Where a bid took exception to a material term of the IFB but also stated that it accepted all terms and conditions of the IFB without exception, conflicting statements in bid created ambiguity and bid was properly rejected as nonresponsive

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### **DECISION**

Inscom Electronics Corporation protests the rejection of its low bid submitted in response to invitation for bids (IFB) No. DAAH01-86-B-A342, a small business set-aside, issued by the Department of the Army for the procurement of missile system electronic components. The contracting officer rejected the bid as nonresponsive because, among other things, the bid contained a statement which took exception to the IFB's quantity requirements. Inscom contends that its bid should not have been rejected because the statement was "inadvertently" included in its bid.

We deny the protest.

The IFB was issued on May 9, 1986, with a bid opening date of June 16, 1986. The IFB contemplated the award of a multi-year, requirements-type contract that required the contractor upon receipt of delivery orders to fill all actual purchase requirements for specified supplies during the contract period. The IFB asked for bid prices on a firm, current-year requirement for 58 units and four additional order quantities each for an estimated 58 units to be ordered in future years. The IFB also indicated minimum and maximum order quantities for future program years and reserved to the Army the right to order more or less than estimated quantities within the minimum/maximum limitations set forth.

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Seven bids were received by the bid opening date and Inscom's prices were low. These prices, however, were contained in a letter dated June 15 (without the bid package) which stated that "Any reduction in quantity quoted will require permission from Inscom." The letter further stated that Inscom accepted all terms and conditions of the IFB with no exceptions. The contracting officer rejected Inscom's June 15 letter bid as nonresponsive because the bid required Inscom's approval for ordering other than the estimated quantities.

Inscom's June 15 letter also said that a "formal bid" had been mailed and should reach the bid office within the next few days. The bid package, however, arrived at the bid office on June 19 with a postmark of June 17. As this was 3 days after the specified bid opening date, the Army did not consider it.

Award was delayed because of the unavailability of funds and was ultimately made to United Plating Incorporated on October 31 after the second low bidder refused to extend its bid acceptance period.

Inscom's protest states that the permission-from-Inscom statement in the June 15 letter "was not part of Inscom's formal submission." (Emphasis in original.) However, as noted above, Inscom's "formal submission" (the bid package) was received by the Army 3 days after bid opening and could not properly be considered for award by itself or as a modification to Inscom's timely submitted June 15 letter bid. Under the terms of the Federal Acquisition Regulation (FAR) clause at 48 C.F.R. § 52.214-7 (1985), "Late Submissions, Modifications, and Withdrawals of Bids," which the IFB incorporated by reference, any bid or modification of a bid received after bid opening may not be considered unless it was sent by registered or certified mail or was late because of government mishandling. Therefore, the Army's rejection of Inscom's "formal submission" received on June 19 was proper since the record reveals no basis for applying any of the exceptions to the late bid rule.

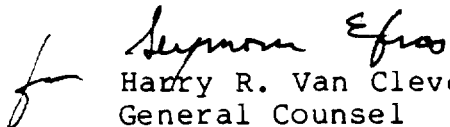
The sole remaining issue for our consideration is the responsiveness of the bid letter of June 15.

To be responsive, a bid must reflect an unequivocal offer to provide the exact product or service called for in the solicitation so that its acceptance would bind the contractor to perform in accordance with the material terms and conditions of the IFB. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49. Any bid that is materially

deficient must be rejected; a defect in a bid is material if it significantly affects price, quality, quantity, or delivery. Tabco Products, Inc., B-222632, Aug. 27, 1986, 86-2 CPD ¶ 231 at 3. Accordingly, Inscom's letter bid is materially deficient, and therefore nonresponsive, because its acceptance would negate the Army's right to reduce the ordered quantities below the estimated 58 units without permission from Inscom.

Although Inscom attempts to explain that the permission statement was included through inadvertence, such explanation could not be considered by the contracting officer because responsiveness must be determined from the bid as submitted. Continental Telephone of California, B-213255, Apr. 17, 1984, 84-1 CPD ¶ 428. Inscom's letter bid which first took exception to a material provision in the IFB and then accepted all terms and conditions without exceptions was at best ambiguous because of these conflicting statements, and it is well-settled that an ambiguous bid in such circumstances must be rejected as nonresponsive. See Hirt Telecon Co., B-222746, July 28, 1986, 86-2 CPD ¶ 121 at 2.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel